

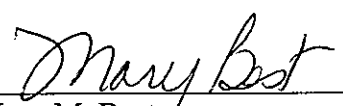


1           3.     On May 19, 2008, EPITOME'S counsel sent me the letter attached hereto as Exhibit  
2 2 in which it declined to remove itself from this matter but did not disclose why.

3           4.     KEENEY WAITE & STEVENS and JILEK are anxious to move this litigation  
4 forward. This motion is not brought in bad faith; it is not brought to delay the resolution of this  
5 matter or to cause further expense to EPITOME. However, since counsel for EPITOME responded  
6 with no facts as to why they would not voluntarily remove themselves from this matter, this motion  
7 was necessary.

8           I declare under penalty of perjury under the laws of the State of California that the foregoing  
9 is true and correct.

10  
11 Dated: 5-28-08

  
\_\_\_\_\_  
Mary M. Best  
KEENEY WAITE & STEVENS  
Attorneys for JILEK

**KEENEY WAITE & STEVENS**

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May 5, 2008

VIA ELECTRONIC MAIL ONLY

Michael S. Tracy  
Jillian L. Proctor  
DLA Piper US LLP  
401 B Street, Suite 1700  
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Re: Jilek vs. Epitome Pharmaceuticals, Ltd

Dear Counsel:

In meeting with my client, Reid Jilek, last week, I discovered that in spring of 1999 he sought the advice of Gray, Cary, Ware and Friedenrich regarding his contract for royalties with Epitome. He met with attorney Matt Kirmayer and an associate of his; his Epitome contract was reviewed, and he sought and received advice as to whether he was entitled to contact various European pharmaceutical companies in order to determine who had formed licensing agreements with Epitome. As you know, Gray Cary is the predecessor law firm to DLA Piper USA LLP.

Attached hereto is a copy of a proposed letter which Jilek prepared which Gray, Cary also reviewed for Jilek. Mr. Jilek sought and received legal advice from Gray Cary as to the validity of his Epitome contract and his legal exposure *vis-a-vis* the attached letter. The attorney's duty of confidentiality extends to potential clients seeking the attorney's assistance with a view toward employing him professionally, even if no employment results. Cal. State Bar Form. Opns. 1984-84, 2003-161

Based upon this information, I would ask that your firm voluntarily disqualify itself without the necessity of a motion to disqualify. There is certainly no doubt that the court would determine that there not only is a "substantial relationship" between the former and current subject matter but that it is indeed the same subject matter. *See, Flatt v. Superior Court (Daniel)* (1994) 9 Cal. 4<sup>th</sup> 275, 283; *City and County of San Francisco v. Cobra Solutions, Inc.* (2006) 38 Cal. 4<sup>th</sup> 839, 846-847. When the attorney's former and current representation involves the work the lawyer performed for the former client, it will always be that the exchange of confidences

**KEENEY WAITE & STEVENS**  
A PROFESSIONAL LAW CORPORATION

Tracy/Proctor  
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must be presumed. *City National Bank v. Adams* (2002) 96 Cal. App. 4<sup>th</sup> 315, 328; *American Airlines, Inc. v. Sheppard, Mullin, Richter & Hampton* (2002) 96 Cal. App. 4<sup>th</sup> 1017, 1038.

Please let me know your decision as soon as possible. It would be my intent to file such a motion, if necessary, immediately after the Early Neutral Evaluation Conference in this matter; however, my preference would be a voluntary withdrawal of your firm.

Very Truly Yours,

KEENEY WAITE & STEVENS

  
MARY M. BEST

MMB/ss

Enclosure

cc: Client



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May 19, 2008  
Via E-MAIL AND U.S. MAIL MBEST@KEENLAW.COM

OUR FILE NO. 368098-1

Mary M. Best, Esq.  
Keeney Waite & Stevens  
125 North Acacia Avenue, Ste. 101  
Solana Beach, CA 92075

**Re: Jilek v. Epitome Pharmaceuticals, Ltd.**

Dear Ms. Best:

I write in further response to your letter dated May 5, 2008. We have investigated Mr. Jilek's allegations that DLA Piper US LLP ("DLA Piper") has a conflict of interest in this matter and have determined that to our knowledge, there is no basis to his allegations. Therefore, DLA Piper will not voluntarily disqualify itself from representing Epitome Pharmaceuticals in this matter.

Please do not hesitate to contact me with any questions.

Very truly yours,

**DLA Piper US LLP**

A handwritten signature in black ink, appearing to read 'Jill Proctor', written over a horizontal line.

Jill Proctor  
Associate

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